89-758

No.

Supreme Court, U.S.
FILED
NOV 13 1989
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

BROTHERHOOD OF RAILROAD SIGNALMEN, AFL-CIO, *et al.*,

Petitioners,

v.

SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Of Counsel:
ALLISON BECK
1300 Connecticut Avenue, N.W.
Washington, D.C. 20036

LAURENCE GOLD
815 16th Street, N.W.
Washington, D.C. 20006

JOSEPH GUERRIERI, JR.
(Counsel of Record)
RICHARD RUDA
MICHAEL G. DZIALO
GUERRIERI, EDMOND & JAMES
1150 17th Street, N.W.
Suite 300
Washington, D.C. 20036
(202) 296-7002
Attorneys for Petitioners

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

QUESTIONS PRESENTED *

The court of appeals ruled that the Railway Labor Act (RLA) overrides the Norris-LaGuardia Act and grants the federal courts authority to enjoin sympathetic refusals to cross a picket line set up by employees engaged in a lawful primary strike where the applicable collective bargaining agreement arguably prohibits such sympathy strikes. The questions presented are:

(1) Whether, in the industries governed by the RLA, the federal courts have, in particular, the authority to enter *status quo* injunctions, pending arbitration, against sympathy strikes alleged to be in breach of the applicable collective bargaining agreement.

(2) Whether the federal courts have, in general, the authority to enter *status quo* injunctions, pending arbitration, against actions alleged to be in breach of an RLA collective bargaining agreement.

(3) If the foregoing questions are answered in the affirmative, whether an employer seeking an injunction against sympathetic refusals to cross a picket line set up by employees engaged in a lawful RLA strike must make a showing (a) that the applicable collective bargaining agreement constitutes a clear and unmistakable waiver of the right to engage in sympathy strikes and (b) that a consideration of all the equities—including those of the employees engaged in the lawful primary strike—requires the issuance of an injunction.

---

* The questions presented in this petition are identical to those presented in the petition for certiorari filed on September 13, 1989, in *International Association of Machinists and Aerospace Workers, AFL-CIO v. The Long Island Railroad Co.*, No. 89-427.

LIST OF PARTIES

A complete list of the parties in the proceedings below is set out in Appendix G. App. 53a.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
LIST OF PARTIES	ii
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	1
JURISDICTION	2
STATUTORY PROVISIONS	2
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE WRIT	6
CONCLUSION	11

TABLE OF AUTHORITIES

CASES — Page

Burlington Northern v. Maintenance Employes, 481 U.S. 429 (1987) 4

Consolidated Rail Corp. v. RLEA, 109 S. Ct. 2477 (1989) 10

International Association of Machinists and Aerospace Workers, AFL-CIO v. The Long Island Railroad Co., 874 F.2d 901 (2d Cir. 1989), *petition for cert. filed*, 58 U.S.L.W. 3172 (U.S. Sept. 13, 1989) (No. 89-427) ..... *passim*

Local Union 1395, IBEW v. NLRB, 797 F.2d 1027 (D.C. Cir. 1986) 10

Metropolitan Edison Co. v. NLRB, 460 U.S. 693 (1983) 10

Trainmen v. Chicago River & I.R. Co., 353 U.S. 30 (1957) 9

STATUTES

28 U.S.C. § 1254(1) 2

29 U.S.C. § 101 2

29 U.S.C. § 104 2-3

Railway Labor Act, 45 U.S.C. §§ 151-88 ..... *passim*

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

No.

BROTHERHOOD OF RAILROAD SIGNALMEN, AFL-CIO, *et al.*,

Petitioners,

v.

SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Petitioners Brotherhood of Railroad Signalmen, *et al.*, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit entered in *Southeastern Pennsylvania Transportation Authority v. Brotherhood of Railroad Signalmen, et al.* (3d Cir. No. 89-1174) on August 14, 1989.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Third Circuit is reported at 882 F.2d 778 and is printed as Appendix A hereto. App. 1a. The memorandum and order and the preliminary injunction issued by the United States District Court for the Eastern District of Pennsylvania are reported at 708 F. Supp. 659 and are printed as Appendix B hereto. App. 27a.

JURISDICTION

The judgment of the court of appeals was entered on August 14, 1989. App. 47a. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS

Section 1 of the Norris-LaGuardia Act provides:

> No court of the United States, as defined in this chapter, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this chapter; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this chapter.

29 U.S.C. § 101.

Section 4 of the Norris-LaGuardia Act provides in part:

> No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:
>
> (a) Ceasing or refusing to perform any work or to remain in any relation of employment; . . .
>
> (e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;
>
> (f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;
>
> (g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 103 of this title.

29 U.S.C. § 104 (a), (e), (f), (g), (h), (i).

STATEMENT OF THE CASE

This case, like *International Association of Machinists and Aerospace Workers, AFL-CIO v. The Long Island Railroad Co.*, 874 F.2d 901 (2d Cir. 1989), *petition for cert. filed*, 58 U.S.L.W. 3172 (U.S. Sept. 13, 1989) (No. 89-427), arises out of the strike of the International Association of Machinists and Aerospace Workers ("IAM") against Eastern Air Lines ("Eastern"). In each case the lower courts enjoined petitioner unions from honoring IAM picket lines. *IAM v. Long Island Railroad* involves labor contracts that do not contain "no strike" clauses; in this case, seven of the eight labor contracts at issue contain narrow "no strike" clauses which on their face do not prohibit petitioner unions from honoring picket lines of IAM-represented Eastern employees.[1]

---

[1] The ten unions involved in this case are the Brotherhood of Railroad Signalmen (BRS), the United Transportation Union (UTU), the Brotherhood of Locomotive Engineers (BLE), the Brotherhood of Maintenance of Way Employes (BMWE), two divisions of the Transportation Communications Union, formerly known as the Brotherhood of Railway and Airline Clerks (BRAC), the International Brotherhood of Electrical Workers (IBEW), the Brotherhood Railway Carmen (BRC), the International Association of Machinists & Aerospace Workers (IAM), the Transport Workers Union (TWU), and the Sheet Metal Workers International Association (SMWIA).

There are eight agreements at issue. The BRS, UTU, BLE, BMWE, the two divisions of BRAC, and the IBEW each have separate agreements with SEPTA. BRC, TWU, IAM and SMWIA have a joint agreement with SEPTA.

At 12:01 a.m. on Saturday, March 4, 1989, employees represented by the IAM began a lawful strike against Eastern. The Eastern strikers' plan, as SEPTA had been informed at least as early as February 24, *see* J.A. 81 [2], rested heavily on the full-fledged use of the economic weapon of secondary picketing, appealing to other organized employees and seeking their aid through sympathy strikes. *See Burlington Northern v. Maintenance Employes*, 481 U.S. 429 (1987) (upholding the legality of such picketing).

Seven of the eight agreements between SEPTA and the ten rail unions which represent employees in SEPTA's Regional Rail Division contain "No Strike" clauses which provide that:

> With respect to a strike by the Union, the provisions of the Railway Labor Act apply.

App. 29a.[3] The "No Strike" clause of the remaining contract, between SEPTA and the IBEW, provides that the IBEW shall not:

> in any way, directly or indirectly authorize, cause, assist, encourage, participate in, ratify or condone any strike, sit-down, sit-in, slow-down, sympathy strike, cessation or stoppage of work, boycott, picketing, or other interference with or interruption of work at any of SEPTA's operations . . . .

App. 29a. Each of the agreements—except the one with the IBEW—includes a side letter agreement which, as the district court found, "refers to the no strike section of the main agreement and prohibits each union from engaging in 'any sympathy strike . . . in support of any job action or picketing by any SEPTA non-commuter rail em-

---

[2] Citations to "J.A. ——" are to the Joint Appendix filed in the court of appeals.

[3] *See* J.A. 39 (BRS); J.A. 44 (UTU); J.A. 48 (BLE); J.A. 53 (BMWE); J.A. 58 (BRAC—T-C Div.); J.A. 62 (BRAC—Clerks); J.A. 76 (BRC/TWU/IAM/SMWIA).

ployees.'" App. 29a-30a.[4] Three of these side letter agreements contain policy statements of the union signatories which set forth the union's policy of honoring the picket lines of other rail unions.[5] It is undisputed that IAM-represented employees of Eastern Air Lines are not "SEPTA non-commuter rail employees." J.A. 168.

On Friday, March 3, 1989, SEPTA sought a temporary restraining order enjoining all of its Regional Rail Division unions from honoring IAM picket lines. J.A. 20-29. A temporary restraining order was issued that night. *Id.* SEPTA's motion for a preliminary injunction was granted on March 8, 1989. App. 41a.[6] Five months later the Third Circuit affirmed. That court acknowledged that "[i]n the end, the unions' arguments might carry the day in arbitration." App. 18a.[7] However, the court below reasoned that SEPTA's position that the collective bargaining agreements prohibited the unions from honoring IAM picket lines "is not so frivolous or insubstantial as to lack arguable justification." App. 18a. On that ground, and in conflict with decisions of the Eleventh and Fifth Circuits, the Third Circuit concluded that an

---

[4] *See also* J.A. 40-41 (BRS); J.A. 45 (UTU); J.A. 50 (BLE); J.A. 54 (BMWE); J.A. 55, 61 (BRAC); J.A. 79-80 (BRC/TWU/IAM/SMWIA).

[5] *See* J.A. 41 (BRS); J.A. 45 (UTU); J.A. 50-51 (BLE). The side letter agreements between SEPTA and BMWE, the two BRAC divisions, and BRC, TWU, IAM and SMWIA do not contain any "policy statement" language. *See* J.A. 52-80.

[6] On March 9, 1989, the court of appeals denied the unions' motion for a stay of the preliminary injunction pending appeal. App. 48a. On March 14, 1989, Justice Brennan, in his capacity as Circuit Justice, denied petitioners' application to vacate the preliminary injunction. App. 49a.

[7] *Cf. IAM v. Long Island Railroad*, 874 F.2d at 909 (affirming issuance of preliminary injunction barring honoring of IAM picket lines even though the absence of no strike provision in contracts "may decrease the Railroads' likelihood of prevailing on the underlying dispute.")

RLA minor dispute was presented. *See id.* The court of appeals therefore assumed, in conflict with decisions of the First and D.C. Circuits, that the district court had jurisdiction to enter a *status quo* injunction pending arbitration. *See* App. 19a.

REASONS FOR GRANTING THE WRIT

This *certiorari* petition—like the pending petition in *IAM v. Long Island Railroad*, No. 89-427 (filed Sept. 13, 1989)—grows out of a bitter and protracted labor dispute at Eastern Air Lines and raises an absolutely fundamental question of federal labor policy: whether the federal courts' equity powers should be directed against concerted refusals to work that do not arise out of the employees' dispute with their immediate employer but out of a refusal to cross a picket line set up by another group of organized employees in the latter's effort to obtain a new collective bargaining agreement.

The *IAM v. Long Island Railroad certiorari* petition sets out in detail the reasons why this question—which is open in this Court—goes to the essence of a free collective bargaining system. That petition also enumerates the multiple conflicts in the decisions of the courts of appeals that have developed as the lower courts have grappled with this question and the resulting disarray in the applicable law.[8] For the reasons set forth in the *IAM v. Long Island Railroad* petition, we request that both petitions be granted and set down for argument in tandem. So as not to burden the Court with a duplicative

---

[8] The *IAM v. Long Island Railroad certiorari* petition identifies two basic conflicts among the courts of appeals on important labor law questions. The first question is whether the federal courts have authority to enjoin Railway Labor Act sympathy strikes. *See* Pet. at 8-12. The second is whether, as a more general matter, the federal courts have jurisdiction to enter *status quo* injunctions, pending arbitration, against actions alleged to be in breach of an RLA collective bargaining agreement. *See* Pet. at 12-13.

presentation, we incorporate pages 4-16 of the *IAM v. Long Island Railroad* petition by reference and add only a few words about the particulars of this case.[9]

1. The collective bargaining agreements in *IAM v. Long Island Railroad* do not contain "no strike" clauses. This case, as we noted in the statment, involves eight labor contracts: One contains a broad "no strike" clause. *See* App. 29a. The seven other contracts include side letter agreements which, as the district court found,

> contain substantially similar language which refers to the no strike section of the main agreement and prohibits each union from engaging in 'any sympathy strike . . . in support of any job action or picketing by any SEPTA non-commuter rail employees.'

App. 29a-30a. And SEPTA's chief labor negotiator had no choice but to admit that IAM-represented Eastern employees are not "SEPTA non-commuter rail employees". J.A. 168.

Since the claim for injunctive relief in both this case and *IAM v. Long Island Railroad* is a *contract based claim*, the logic of the situation is that these manifold differences in the contractual "no strike" clauses at issue should result in differences in result. Neither the Second Circuit nor the Third Circuit felt itself bound by any such logic.

The Second Circuit enjoined the rail unions from honoring picket lines of IAM-represented Eastern employees even in the absence of "no strike" clauses. And the court below held that SEPTA's argument that *all* of the contracts prohibit the honoring of IAM secondary picket lines "is not so frivolous or insubstantial as to lack arguable justification." App. 18a. That court reached this result—which it also found to be a sufficient basis for an injunction pending arbitration—even though

---

[9] Along with this petition respondent SEPTA is simultaneously being served with copies of the petition filed in *IAM v. Long Island Railroad.*

IAM-represented Eastern employees are not "SEPTA non-commuter rail employees"; even though only one of the contracts or side letter agreements, the one with the IBEW, on its face prohibits the union conduct which is the subject of the injunction; even though SEPTA's broad "no strike" agreements with the IBEW and with unions representing other SEPTA employees clearly demonstrate that SEPTA is a sophisticated employer which has successfully negotiated prohibitions on the honoring of picket lines with some unions;[10] and even though the extra-contractual union-specific "policy statement" language which was the foundation of the court of appeals' holding, *see* App. 17a-18a, appears in only two of the seven side letter agreements.[11] In short, it made no difference to the court of appeals what the applicable agreements said—the honoring of picket lines was enjoined.

In sum, the decision below, like the *IAM v. Long Island Railroad* decision, is in everything but name an across-the-board proscription on sympathy strikes in the railroad and airline industries, regardless of the terms of the applicable labor agreements. The court of appeals held, in essence, that where the RLA applies a union that refuses to agree to waive its right to honor picket lines (here nine of the ten unions) will be treated in the same way as a union that agrees to do so (here the IBEW): Both will be enjoined from honoring a lawful picket line.

2. The Third Circuit also followed the Second Circuit in equating the honoring of picket lines with participation

[10] *See* J.A. 97 (SEPTA-TWU contract covering city-side employees provides that "[d]uring the term of this Agreement, no employe shall participate in any strike, slow-down, sit-down, stay-in or other stoppage of work.").

[11] The "policy statement" language in the BRS, UTU and BLE agreements in fact reaffirms the general policy of each of these unions to honor picket lines despite its agreement to cross the picket lines of "SEPTA non-commuter rail employes". *See* App. 6a (quoting BRS policy statement). *See also* J.A. 41, 45-46, 50-51.

in a primary strike over an arbitrable contract dispute. In the view of the court of appeals, the only employee interest at stake here is that of the petitioner rail unions. That court acknowledged that "[t]he impact of any secondary activity into which the Eastern employees might enter will, of course, be diminished if the members of the unions cannot honor those picket lines." App. 20a.[12] The court below also recognized that the Eastern employees might not exercise their right to establish secondary picket lines because the honoring of those picket lines had been enjoined. *See* App. 20a & n.8. Nevertheless, the court of appeals gave *no weight whatsoever* to the rights of the Eastern employees. "It must be remembered," that court said, "that the rights which this Court is called on to determine are those of the [SEPTA] unions and not those of the Eastern unions. . . . [H]aving found that a minor dispute exists, the courts have the authority under [*Trainmen v. Chicago River & I.R. Co.*, 353 U.S. 30 (1957)] to maintain the integrity of the arbitration process by enjoining the [SEPTA] unions from striking prior to the completion of the arbitration proceedings." App. 21a.

The facile equation of this case with a *Chicago River* case totally ignores the true interests at stake. Under *Chicago River* the injunction against self-help is both in form and *in substance* directed at a party to a contract who has no right to engage in self-help over a contract interpretation dispute and who does have a right to an arbitral resolution of its breach of contract claim. Here, by contrast, while in form the injunction is against the petitioner unions, which are parties to collective bargaining agreements with the respondent railroad, in substance the injunction is against *the employees of Eastern Air Lines represented by the IAM*, who have exhausted

---

[12] *Cf. IAM v. Long Island Railroad*, 874 F.2d at 910 ("We agree that it is somewhat anomalous that secondary picketing is allowed by *Burlington Northern*, but considerably undercut in its effectiveness by the type of injunction entered here.")

the Railway Labor Act collective bargaining procedures and who have a right to engage in meaningful self-help.

The court of appeals compounded its error by holding that it is sufficient for a carrier seeking a *status quo* injunction to show that it is "arguable" that the applicable collective bargaining agreement may be read as a waiver of the employees' right to honor a lawful picket line. *See* App. 10a (citing *Consolidated Rail Corp. v. RLEA*, 109 S.Ct. 2477 (1989)). The court below reasoned that "[a] requirement that SEPTA prove that the collective bargaining agreements clearly and unmistakably indicate that the unions waived their right to engage in a sympathy strike is fundamentally at odds" with the standard articulated by this Court for determining whether an RLA minor dispute is presented. App. 12a.

This reading of the RLA exalts form over substance. In the RLA context as in the National Labor Relations Act context, the correct rule is that a contractual waiver of this basic statutory right "must be 'clear and unmistakable'." *Local Union 1395, IBEW v. NLRB*, 797 F.2d 1027, 1029 (D.C. Cir. 1986) (quoting *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693, 708 (1983)). Any other rule permits the courts to issue injunctions that in practical terms negate the basic statutory right to strike and to picket for a new collective bargaining agreement merely upon finding that the position of one party is "arguable." And permitting such injunctions turns the RLA's minor dispute procedures into the means for undermining the Act's major dispute procedures.

CONCLUSION

For the foregoing reasons, the petition for a writ of *certiorari* should be granted and this case should be set down for argument in tandem with *IAM v. Long Island Railroad*, No. 89-427.

Respectfully submitted,

Of Counsel:
ALLISON BECK
1300 Connecticut Avenue, N.W.
Washington, D.C. 20036

LAURENCE GOLD
815 16th Street, N.W.
Washington, D.C. 20006

JOSEPH GUERRIERI, JR.
(Counsel of Record)
RICHARD RUDA
MICHAEL G. DZIALO
GUERRIERI, EDMOND & JAMES
1150 17th Street, N.W.
Suite 300
Washington, D.C. 20036
(202) 296-7002
Attorneys for Petitioners

Dated: November 13, 1989